

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1985 of 2024

**[Arising out of the Order dated July 26, 2024 passed by the
'Adjudicating Authority' (National Company Law Tribunal,
New Delhi Bench-IV) in CP (IB) No. 242(PB)2020]**

IN THE MATTER OF:

Debarata Ray Choudhuri,
2, Siri Fort Road
New Delhi-110049
E-Mail ID: r.rrc16@gmail.com
Mob: +91 8800821578

...Appellant

Versus

The State Trading Corporation of India Ltd.

Through its Managing Director
CIN: 174899d11956GOI002674
Jawahar Vyapar Bhawan Tolstoy Marg,
New Delhi, Delhi, India – 110001
E-mail id: co@stclimited.co.in
Tel: 91-11-23313177

...Respondent

Present:

For Appellant : Ms. Stuti Jain and Mr. Akshu Jain, Advocates
Mr. D.R. Choudhuri, Appellant in Person

For Respondent : Mr. Uday Gupta, Sr. Advocate with Ms. Shivani Lal,
Mr. Hiren Dasan, Mr. Sanam Singh, Mr. Unmukt
Gera and Mr. Ajay Sharma, Advocates.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

That the present Appeal has been preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter 'IBC') against the Final Order dated 26.07.2024 passed by the Adjudicating Authority, in CP No. (IB) 242(PB)2020, whereby the Adjudicating Authority dismissed the Application filed under Section 9 of the IBC seeking initiation of Corporate Insolvency

Resolution Process ('CIRP') against the Corporate Debtor erroneously on the ground of pre-existing disputes in the instant case.

Brief facts of the case

2. The Appellant, a senior advocate, filed an Application for the initiation of the CIRP against State Trading Corporation of India Ltd., citing a default in the payment of professional fees amounting to Rs 6,26,90,985/-. This amount comprised a principal sum of Rs 3,93,55,110/- and an interest component of Rs 2,33,35,875/-. However, the Adjudicating Authority dismissed the Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016.

Submissions of the Appellant/Operational creditor (OC) – Debarata Ray Choudhuri

3. The Operational Creditor asserts that, starting in 2006, the Respondent engaged his services for recovering various amounts and handling multiple suits and legal proceedings arising from various contracts. The Respondent entrusted him with high-stakes and significant matters, following which the Appellant submitted a schedule of fees. The Respondent issued multiple schedules of fees on the following dates: 07.06.2006, 11.08.2006, 05.06.2008, 17.09.2010, 20.09.2010, and 12.12.2014.

4. The Appellant asserts that all submitted bills were prepared in accordance with the various fee schedules issued by the Respondent. In particular, for matters involving Global Steel Holdings Ltd. and Adani Enterprises Ltd., the Appellant applied special fees due to the high-stakes and the substantial volume of documents requiring review. This arrangement

had been communicated to and agreed upon by the Respondent. Additionally, an email dated 24.07.2017, regarding the claim for special fees in the Adani Group arbitration, was placed on record as evidence of this understanding. However, this evidence was overlooked.

5. The Appellant raised bills for all litigation and arbitration matters between STC and these corporate groups. For cases related to the Mittal Group, he charged Rs 55,000/- per appearance, and the bills were submitted accordingly. Not a single bill was ever returned with an objection regarding the validity of the applicable fee schedule. There was never any dispute that the Appellant provided legal services to the Respondent; however, his payments remained unpaid.

6. The Operational Creditor addressed a letter to the Director of Law, Director of Marketing, Director of Finance, and General Manager (Law), highlighting the issues of non-payment, short payment, and arbitrary deductions of professional bills from 2009 onwards. Another letter dated 21.05.2011 was sent to the Chairman-cum-Managing Director and other directors, bringing these concerns to their attention. Between 2012 and 2017, multiple letters were sent to the CMD, directors, and GM (Law), demanding payment of outstanding bills. However, no response was received to any of these letters or communications.

7. By 2019, the running account maintained by the Operational Creditor reflected a debit balance of Rs 3,93,55,110/- as due and outstanding against the Corporate Debtor.

8. In the email dated 07.02.2017, the Respondent acknowledged the bills submitted by the Appellant, raising concerns only about 23 bills due to the absence of Order Sheets. However, the Respondent did not dispute the validity of these bills. The total amount of the bills allegedly lacking Order Sheets amounts to Rs 30,47,500/-. Even after deducting both the payments made by the Respondent to the Appellant and the amount corresponding to the bills without Order Sheets, the outstanding amount remains Rs 3,63,07,610/- [that is, Rs 3,93,55,110 (-) Rs 30,47,500]. This amount, as admitted by the Respondent, remains payable to the Appellant.

9. Due to the Respondent's inaction, the Appellant (Operational Creditor) issued a Form 3 Demand Notice to the Corporate Debtor on 08.01.2019, seeking recovery of the outstanding amount. However, this Notice contained several calculation errors, rendering it redundant, and the Respondent responded to it on 18.01.2019.

10. To rectify these errors, the Appellant issued a fresh Demand Notice under Form 3, pursuant to Section 8 of the IBC, on 26.07.2019, claiming dues amounting to Rs 3,93,55,110/-. The Respondent duly replied to this Demand Notice via a letter dated 08.08.2019. The Respondent in the said Reply has categorically admitted that:

“It is surprising that your Client has alleged that payments were not made to your Client from the year 2007 onwards by STC, but your Client has still continued to appear and represent STC before different legal forums upto the year 2018. It is also astonishing that your Client never raised any such grievance over the past 10 years regarding non-payment of Bills, but now, your Client has suddenly raised the alleged demands, after STC chose to discontinue taking legal services from your Client sometime in the 3rd quarter of 2018.”

.....

“You are therefore requested to withdraw the Demand Notice dt.26.07.2019 and advise your Client appropriately to ensure that all Bills that your Client claims as due are properly submitted as per STC instructions dt.17.05.2017, the Bills carry the necessary particulars alongwith the Order sheets with amount of Professional fee strictly as per STC’s schedule of fee to avoid any cutting / overwriting, as cutting / overwriting on bills lead to Audit/ Finance objections, thereby delaying the process of clearance of Bills”

11. In the email dated 07.06.2017, the Respondent explicitly acknowledged receipt of four bills—Bill Nos. 318, 317, 304, and 303—dated 20.05.2017 and 24.05.2017. Furthermore, in a trailing email dated 08.06.2017, the Respondent confirmed that the services corresponding to these bills were indeed provided by the Appellant but cited technical reasons for delaying their processing. In an email dated 24.07.2017, the Respondent addressed the issue of ‘special fees’ related to the Adani Group, recognising the substantial claims and extensive work involved. The email explicitly stated that the Respondent had agreed to consider the Appellant's fee claims for the submitted bills. Additionally, emails from June 2016 indicate that the Arbitral Tribunal had officially recorded the Appellant’s presence, yet his bills remained unprocessed and unpaid. The Respondent's emails dated 14.03.2017 and 26.11.2016 further confirm the Appellant’s appearances in arbitration matters concerning the Adani Group.

12. Subsequently, aggrieved by the Respondent’s inaction and failure to pay the pending and admitted debt despite the issuance of a Demand Notice, the Appellant was compelled to file an Application under Section 9 of the IBC, bearing CP No. (IB) 242 (PB) 2020, before the Adjudicating Authority in Delhi on 16.12.2019.

13. In 2022, the Appellant filed Writ Petition (C) No. 6146/2022 against the Respondent before the Hon'ble High Court of Delhi, seeking the processing of his bills. This Petition remains pending. In the same matter, the Respondent explicitly admitted that a sum of Rs 5,00,000/- was payable to the Appellant, as per its own calculations, and this admission was recorded by the Hon'ble Delhi High Court in its Order dated 30.05.2023. The Hon'ble High Court has repeatedly emphasised that advocates' bills should be paid within one month, including directing the government and its departments to ensure timely payments so that advocates are not subjected to undue hardship and forced to file petitions. Writ Petition (C) No. 6146/2022 was filed before the Hon'ble High Court of Delhi while the Appellant's Application under Section 9 of the IBC was pending before the NCLT. The reliefs sought in these proceedings were distinct: the Section 9 IBC Application sought insolvency resolution, whereas the Writ Petition challenged the Respondent's arbitrary refusal to process the Appellant's bills, despite being a government company. On 26.07.2024, the Adjudicating Authority dismissed the Section 9 IBC Application without considering the documents submitted by the Appellant, the admissions made by the Respondent, the Appellant's written submissions, or the compilation of judgments relied upon by the Appellant.

14. The Respondent was not making payments for all the Appellant's bills but instead provided ad hoc payments from time to time, citing financial and other difficulties while assuring that the remaining payments would be made soon. The Appellant filed the Petition solely based on unpaid bills and did not include any bills that had already been settled. Furthermore, the Respondent

repeatedly requested the submission of fresh bills with updated dates after keeping the original bills pending, purportedly to facilitate payment. For instance, in an email dated 11.05.2016, the Respondent specifically asked for resubmission of bills with current dates. This clearly indicates that the Respondent never disputed the validity of the Appellant's bills but, instead, sought fresh replacement bills as a means to circumvent delays in processing payments while maintaining its records.

15. The Appellant sent an email dated 05.07.2019, claiming fees under five bills for defending 84 criminal revision cases. Additionally, a reminder was sent on 11.05.2016 regarding payment for arbitration matters before a panel of three Hon'ble retired Supreme Court Judges. The Appellant consistently raised invoices over time, and the Respondent never disputed these invoices.

16. Between 2009 and 2018, the Appellant submitted over 200 bills/invoices for professional services, totalling Rs 4,84,70,481/-. Out of this amount, the Respondent made payments amounting to Rs 91,15,371/- (including TDS of Rs 11,80,109/-), with Rs 79,35,262/- transferred via RTGS. The remaining balance of Rs 3,93,55,110/- remains unpaid. In an email dated 07.02.2017, the Respondent admitted the bills submitted by the Appellant, raising concerns only about 23 bills due to the absence of Order Sheets, though the validity of these bills was not disputed. The amount corresponding to these 23 bills was Rs 30,47,500/-. Even after deducting the payments already made and the amount related to bills lacking Order Sheets, the outstanding due remains Rs 3,63,07,610/- [that is, Rs 3,93,55,110 (-) Rs

30,47,500], which the Respondent has admitted as payable to the Appellant. The claim, which constitutes a right to payment, was never disputed by the Respondent. Moreover, under Section 3(6) of the IBC, the Respondent did not deny the existence of the claim. In line with the Respondent's admissions, the provisions of the IBC become applicable as soon as the default amount exceeds Rs 1 lakh.

17. The mere non-processing of the Appellant's bills on technical grounds does not establish the existence of a pre-existing dispute. The Adjudicating Authority erred in concluding that the Respondent had raised a dispute qualifying as a 'pre-existing dispute,' thereby justifying the dismissal of the Appellant's Application under Section 9 of the IBC at the threshold.

18. The Adjudicating Authority failed to recognise that the Demand Notice under Section 8 of the IBC was issued on 26.07.2019, and the Application under Section 9 was filed before the NCLT on 16.12.2019. Therefore, the pecuniary threshold applicable to the present case under Section 4 of the IBC is Rs 1,00,000/-. The Appellant rendered professional services amounting to Rs 4,84,70,481/- and submitted corresponding bills to the Respondent. Out of this amount, the Respondent paid Rs 91,15,371/-, which includes TDS of Rs 11,80,109/- and an RTGS transfer of Rs 79,35,262/-. Consequently, the outstanding amount payable by the Corporate Debtor to the Appellant stands at Rs 3,93,55,110/-.

19. The Respondent paid a sum of Rs 79,35,262/- to the Appellant and deposited TDS amounting to Rs 11,80,109/- with the Income Tax Department

in the Appellant's name. Under Section 194J of the Income Tax Act, 1961, TDS is deducted at 10% on the amount paid or credited to the rightful beneficiary. This indicates that the Respondent acknowledged the Appellant's professional services for a total of Rs 1,18,01,090/-. Based on this, the outstanding amount payable to the Appellant is at least Rs 26,85,719/- [that is, Rs 1,18,01,090 - (79,35,262 + 11,80,109)].

20. For the financial year 2016-17, as per Form 26AS, which stands admitted, the Respondent recorded that the Appellant provided services worth Rs 39,47,300/- and deposited TDS of Rs 3,94,730/-. However, instead of paying the full Rs 39,47,300/-, the Respondent paid only Rs 27,18,441/-, including TDS (that is, Rs 23,23,711 + Rs 3,94,730). Without prejudice, the remaining admitted amount of Rs 12,28,859/- is yet to be paid to the Appellant.

21. The Appellant has relied on various orders of the Adjudicating Authority dated 23.11.2021, 15.02.2022, and 22.04.2022, wherein the attempts at resolution were acknowledged in the Order Sheets.

22. The Appellant, a senior advocate, consistently appeared alongside a briefing advocate. While the bills of the briefing advocate and the advocate-on-record (AOR) were duly cleared, the Appellant's bills remained unprocessed. The Order noting discrepancies in the bills effectively defames a senior advocate who has upheld the highest standards of integrity while representing the government, its clients, and various government companies. It unjustly questions the authenticity of the invoices based on delays in filing

legal proceedings, despite the fact that even the Respondent never raised such concerns. The Appellant has maintained an unblemished record throughout his 55-year legal career, which led to his appointment as a Special Public Prosecutor by the Enforcement Directorate in several cases. Given these facts, the remarks in the order should be expunged.

23. The Adjudicating Authority appears to have exhibited bias by repeatedly stating in open court that the Appellant, being a lawyer, should not have approached the Tribunal for relief. This stance disregards the fact that the Hon'ble Delhi High Court has consistently ruled that advocates' bills must be paid within a month and that they should not be compelled to file petitions for their dues. Moreover, the NCLT itself has, in certain cases, appointed Interim Resolution Professionals against companies for failing to pay advocates' bills.

24. As a government company engaged in high-stakes litigation involving thousands of crores, the Respondent must be held to a higher standard of accountability, particularly regarding the timely payment of legal fees. There should be no distinction in the standards applied to private and government companies when it comes to fulfilling financial obligations. The serious lapse and deliberate avoidance of payment by the Respondent should not result in the Appellant being penalised simply for having represented a government company.

25. The Appellant respectfully requests that the present Appeal be allowed and that the Impugned Order dated 26.07.2024, passed by the Adjudicating Authority in Company Petition No. (IB) 242 (PB) 2020, be set aside.

Submissions of the Respondent/Corporate Debtor – The State Trading Corporation of India Ltd.:

26. A senior advocate should not be permitted to file an Application under Section 9 of the IBC, read with Rule 6 of the Insolvency and Bankruptcy (Adjudicating Authority) Rules, 2016, against a client, as such a petition could push the client toward insolvency. Before being designated as a senior advocate, the Applicant/Petitioner practiced as an advocate, and in both capacities, it is his fundamental duty to safeguard the interests of his client. Allowing such proceedings to continue at the instance of a senior advocate would contravene the core principles of ethics and morality that govern the legal profession.

27. The Appeal is liable to be dismissed by this Hon'ble Tribunal because, after filing the Petition before the NCLT in September 2019, the Appellant subsequently approached the Hon'ble High Court of Delhi by filing Writ Petition (C) No. 6146/2022. In the Writ Petition, inter alia the prayer made was:-

“(a) Issue a writ of Mandamus commanding the Respondents to process the invoices of the Petitioner which have been submitted to Respondent No. 1 and determine the amount and to pay the amount payable and convey the same to the Petitioner within three weeks;”

28. The Petition before the NCLT sought the initiation of the CIRP concerning the alleged debt claimed by the Appellant against the Respondent. Meanwhile, before the Hon'ble High Court, the Appellant initially sought a

determination of the amount payable and subsequently requested payment from the Respondent. In other words, the alleged debt had not yet been quantified or determined by the Appellant. Furthermore, by filing the Writ Petition, the Appellant implicitly treated the Respondent as a solvent entity. In the above issue Writ Petition (C) No. 6146/2022 the Appellant himself pleaded as under:-

“...The Petitioner states that NCLT proceedings is not equally efficacious alternative remedy as the said proceeding raised the question of solvency of the respondent no. 1 in any event, without prejudice, the said proceedings has been made virtually infructuous by taking adjournments after adjournments and since the petitioner is about 82 years old and has survived from corona recently, hence, the petitioner has approached to his Hon’ble High Court by filing this writ as there is no any other alternative. ”

29. The proceedings before the NCLT in any case were virtually given up by the Appellant.

30. In the first Demand Notice, the Appellant claimed an amount of Rs 6,48,17,455/-. However, in its Reply dated 18.01.2019, the Respondent unequivocally denied the existence of such debt. Additionally, the Respondent argued that the proceedings before the NCLT were barred by limitation, as the invoices in question pertain to the period from 11.12.2006 to 21.01.2018, while the Petition was filed in September 2019. Consequently, the Petition, insofar as it relates to invoices and bills dated between 11.12.2006 and 31.08.2015, was clearly time-barred. In support of this argument, the Respondent relies on the judgment of the Hon’ble Supreme Court in **‘B.K. Educational Services Pvt Ltd vs Parag Gupta and Associates’** (AIR 2018

SC 5601), particularly paragraph 27, which affirms that the Petition was barred by limitation.

31. For the invoices and bills covering the period from September 2016 to January 2018, the Respondent had raised a valid pre-existing dispute. In its Reply dated 18.01.2019, the Respondent specifically contested the accuracy of the bills and invoices relied upon by the Appellant. It was asserted that the Appellant had issued invoices arbitrarily, based on his own fee structure rather than adhering to the prescribed schedule of fees. Additionally, separate invoices were raised for group matters and batch matters, which was impermissible under the approved fee schedule. This schedule had been placed on record by the Respondent in its Written Submissions before the NCLT. Following the Respondent's Reply dated 18.01.2019, the Appellant withdrew the first Demand Notice issued on 08.01.2019 and, subsequently, issued a revised Demand Notice on 26.07.2019, reducing the alleged debt amount to Rs 6,26,90,985.02/-. This reduction in the claimed amount itself indicates a serious dispute regarding the debt. These facts clearly demonstrate that the Respondent had successfully raised a valid pre-existing dispute within the meaning of Section 8(2) of the IBC.

32. The alleged demand raised in the second Demand Notice dated 26.07.2019 was also contested by the Respondent in its Reply dated 08.08.2019. Furthermore, in the Written Submissions filed by the Appellant before the NCLT, it was acknowledged that a sum of Rs 30,47,500/- could be deducted from the claimed amount. This further underscore significant

uncertainties regarding the quantification of the alleged debt. The NCLT has rightly relied on the judgment of the Hon'ble Supreme Court of India in **'Mobilox Innovations Private Limited vs Kirusa Software Pvt Ltd'** [2017 INSC 975], which establishes that the initiation of the CIRP is not permissible when there are unresolved disputes concerning the alleged debt.

33. The Appellant cannot rely on the Order dated 30.05.2023 passed by the Hon'ble High Court in the Writ Petition, as the Order itself records that the Respondent disputes the Appellant's calculations. The sum of Rs 5,00,000/- was merely an outcome of discussions held with the Appellant to explore an amicable resolution of the dispute. However, since this amount was not acceptable to the Appellant, any discussions regarding a potential settlement cannot be considered binding on the Respondent in any manner. Such negotiations were conducted *without prejudice* to the Respondent's rights and contentions.

34. In light of the aforementioned facts and circumstances, the Judgment and Order dated 26.07.2024 passed by the NCLT in CP No. (IB) 242(PB)2020 does not warrant any interference.

Appraisal

35. Heard Counsels of both sides and perused all materials on record. The main issue before us is whether pre-existing dispute exists or not basis which the Section 9 Petition was rejected.

36. From the materials on record, it is observed that the Operational Creditor initially issued a Demand Notice dated 08.01.2019 to the Corporate

Debtor under Section 8 of the IBC, 2016, seeking payment of outstanding dues amounting to Rs 6,48,17,455/-. In response, the Corporate Debtor furnished a Reply dated 18.01.2019. However, the first Demand Notice was subsequently withdrawn due to a calculation error. Thereafter, the Applicant issued a revised Demand Notice dated 26.07.2019 under Section 8 of the IBC, 2016, demanding payment of outstanding dues amounting to Rs 6,26,90,985.02/-. This amount comprised a principal sum of Rs 3,93,55,110/- and an interest component of Rs 2,33,35,875.02/-, calculated at a rate of 15% per annum and this is reflected in Part-IV of Form 5 giving particulars of the operational debt.

37. Before proceeding further to determine debt and default, we delve into the issue of pre-existing dispute between the Operational Creditor and the Corporate Debtor before issue of the Section 8(1) Notice, which is vehemently being argued by the Respondent and also upheld by the Adjudicating Authority while dismissing the Section 9 Petition.

38. The Respondent, in its Reply dated 18.01.2019, specifically challenged the accuracy of the invoices issued by the Appellant for the period from September 2016 to January 2018. It was contended that the invoices were prepared arbitrarily, based on the Appellant's own fee structure rather than the approved schedule of fees. Additionally, separate invoices were raised for group matters and batch matters, which was impermissible under the prescribed fee structure. The Respondent submitted the approved fee schedule as part of its Written Submissions before the NCLT.

39. Following the Respondent's objections in its Reply dated 18.01.2019, the Appellant withdrew the initial Demand Notice dated 08.01.2019 and subsequently issued a revised Demand Notice on 26.07.2019, reducing the alleged debt amount to Rs 6,26,90,985.02/-. This reduction in the claimed amount itself suggests the existence of a serious dispute regarding the debt.

40. In 2022, the Appellant filed Writ Petition (C) No. 6146/2022 before the Hon'ble High Court of Delhi, seeking the processing of his bills. In its Order dated 30.05.2023, the Hon'ble High Court noted that the Respondent disputed the Appellant's calculations. The amount of Rs 5,00,000/- was merely a figure arrived at during discussions to explore an amicable resolution, and it did not constitute an admission of liability by the Respondent.

41. The Appellant has alleged non-payment of legal fees dating back to 2007, despite representing the Corporate Debtor in various legal proceedings until 2018. However, no grievance regarding unpaid invoices was raised for over a decade. As per the Respondent's submissions, the issue of outstanding payments was brought up only after the Corporate Debtor ceased engaging the Appellant's services in 2018.

42. Moreover, concerns regarding the need for additional supporting documents for the invoices were raised by the Corporate Debtor in an email dated 07.02.2017 [@148/102 APB].

43. It is evident from the earlier discussion that disputes regarding the outstanding amount claimed by the Appellant existed even before the

statutory Demand Notice was issued. These disputes are genuine and substantial, rather than being spurious, hypothetical, or illusory. Section 8(2)(a) of the IBC, 2016, stipulates that a Corporate Debtor must, within ten days of receiving a Demand Notice or invoice under Section 8(1), inform the Operational Creditor of the existence of a dispute, if any, or provide a record of any pending suit or arbitration proceedings initiated before the receipt of such Notice or invoice in relation to the dispute. In the present case, the Corporate Debtor has complied with this requirement. Further, the Adjudicating Authority, in line with the provisions of Section 9(5)(i)(d) of the Code and relying on established legal precedents, has concluded that the Corporate Debtor cannot be admitted into insolvency. In reaching this decision, the Adjudicating Authority has placed reliance on two significant judgments of the Hon'ble Supreme Court:

- ***Mobilox Innovations Private Limited vs Kirusa Software Private Limited (Civil Appeal No. 9405 Of 2017) passed on 21.09.2017***

"We have also seen that one of the objects of the Code qua operational debts is to ensure that the amount of such debts, which is usually smaller than that of financial debts, does not enable operational creditors to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations. It is for this reason that it is enough that a dispute exists between the parties."

Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence, which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."

- ***Sabarmati Gas Limited vs. Shah Alloys Limited (Civil Appeal No. 1669 of 2020)***

"It is enough that a dispute exists between the parties and in other words, what is to be seen is whether there was a plausible contention requiring investigation for the purpose of adjudication. Taking note of the nature of the dispute of the respondent as referred hereinbefore in respect of the claim made by the appellant, we do not find any reason to disagree with the concurrent findings of the Tribunals that there existed a 'pre-existing dispute' between the parties before the receipt of demand notice under Section 8, IBC. In other words, the dismissal of the application under Section 9, IBC on the ground of 'pre-existing dispute' cannot be held to be patently illegal or perverse. We also do not find any reason, in the facts and circumstances, to hold that the case set up by the respondent was a patently feeble legal argument. At any rate we are not inclined to brush aside the case of the respondent as spurious. We may hasten to add here that we shall not be understood to have held that the dispute set by the respondent regarding the dues is ultimately to be upheld. Certainly, when the expression 'pre-existing dispute' is used it will only indicate the existence of a dispute prior to the receipt of a demand notice under Section 8, IBC, and the correctness or its truthfulness is a matter of evidence. In short, the respondent has succeeded in raising a dispute describable as 'pre-existing dispute'. In that view of the matter once we find that the Tribunals have rightfully held that there existed a 'pre-existing dispute' between the parties there cannot be an order of remand of the matter to the Tribunal for reconsideration of Section 9 application under IBC."

Both these judgments support the case of the Respondent and we do not find any infirmity in the findings of the AA placing reliance on these judgements.

44. Upon reviewing the facts of the present case, it is evident that disputes and conflicts existed regarding the alleged outstanding amount claimed by the Applicant even before the issuance of the statutory Demand Notice and the filing of the present Application. These disputes specifically pertain to the invoices raised by the Applicant/Operational Creditor. A pre-existing dispute is apparent, as the invoices do not align with the agreed schedule of fees. Additionally, the discrepancies in these invoices remain unaddressed despite prior communications highlighting the inconsistencies.

45. We make it clear that we are not expressing any opinion on non-IBC issues of defamation raised by the Appellant and issues of ethics and morality

raised by the Respondent, as they are not relevant to decide on the Appeal under the Code.

46. The issue relating to limitation has not been gone into as all the details of the bills has not been placed on record. Moreover, since pre-existing dispute has been clearly established in the facts of the case, we need not go into any further issue.

Orders:

47. We concur with the finding of the Adjudicating Authority that there is a pre-existing dispute and Section 9 Application cannot be admitted in these conditions. Therefore, the Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Arun Baroka]
Member (Technical)**

**New Delhi.
March 05, 2025.**

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